IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUIT NO. 2114 OF 1984

M/s. Atam Singh Kohli Bros
and Anr. .....*Plffs.*
vs.
Shree Vallabh Glass Works Ltd .....*Defnds.*

M. Nair for plffs.
None for defnds.

CORAM: S.U. KAMDAR, J.

DATE : 28TH JUNE, 2005.

P.C. :

1. The plaintiff has filed the present suit for the recovery of sum of Rs. 1,49,933.24/- with interest at the rate of 18% p.a. on the principal amount of Rs. 83,305.87/-. The said amount has been claimed by the plaintiff on the following facts of the case.

2. Pursuant to the discussion sometime in or about December, 1980 the defendants agreed to

supply coloured figured glass to the plaintiffs which was in turn to be despatched to the customers of the plaintiff outside India. A letter dated 18.12.1980 was executed by the defendant to the plaintiff where the defendant agreed to supply 78 cases of 3mm coloured figured glass to one of the customer of the plaintiff, M/s. Akbar Brazeiesh. A proforma invoice was also sent by the defendant inrespect of the said supply. The terms and conditions of the proforma invoice were agreed and the plaintiff made payment to the defendant. It is the case of the plaintiff that the defendant thereafter supplied from time to time the said goods of coloured figured glass which was imported to the customers of the plaintiff. Even after the supply of 78 consignments of the coloured glass there were further transactions and the defendant were required to supply the goods in respect of which an advance payment of Rs.22,00,172.80/- was made by the plaintiff. This transaction took place between December 1980 to March 1981. The transaction of 4.2.1981 was to be effected in

accordance with the letter dated 26.2.1981. However the said goods could not be despatched due to strike in the defendant factory. The defendants by their letter requested the plaintiff that the said goods could not be despatched and therefore the letter of credit should be extended. The defendant agreed to despatch the said material as soon as the strike is over. It is the case of the plaintiff that inrespect of the said goods the defendants and the plaintiffs was to share extra freight. Inrespect of the said consignment it is the case of the plaintiff that there was short delivery and though plaintiff made advance payment of Rs.22,00,172.80/-. The goods were despatched worth Rs.18,97,145.32/- leaving behind the balance money of Rs.3,03,027.48/- The plaintiff in the present case has also made an additional claim of commission of Rs.38,459.39 and difference in freight charges as well claim for interest which the plaintiff was entitled to Rs.1,44,933.24/-. It is the case of the plaintiff that infact on 8.1.1992 the plaintiff admitted an outstanding amount of Rs.38,790.95/- subject to final

confirmation of the accounts. In the aforesaid circumstances the present suit has been filed for the recovery of the aforesaid amount. The defendants have not filed any written statement though learned counsel appearing for the defendant having expired, I by my order dated 6.6.2005 directed the Prothonotary and Senior Master to issue notice to the defendants. Pursuant thereof the office has issued notice to the defendants dated 8.6.2005 which has come back with a remark ‘closed’. The said service report is taken on record. On the aforesaid ground I find no defence in the present suit. I therefore pass the following order.

. There shall be decree in favour of the plaintiff and against the defendants for a sum of Rs.1,44,933.24/-. The defendants shall also be liable to pay interest on the principal amount of Rs. 83,305.87/- at the rate of 9% p.a. from the date of the suit till payment

and or realisation. Defendants to pay cost of the suit.

****